

1 AN ACT relating to child support after driving under the influence.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 532 IS CREATED TO
4 READ AS FOLLOWS:

5 (1) As used in this section:

6 (a) "Disabled":

7 1. Means a legal disability, not a medical disability, as is measured by
8 functional inabilities; and

9 2. Includes inabilities caused by psychological, psychiatric, or stress-
10 related trauma, and refers to any person seventeen (17) years of age or
11 older who is unable to make informed decisions with respect to his or
12 her personal affairs to the extent that he or she lacks the capacity to
13 provide for his or her physical health and safety or the physical health
14 and safety of a minor child, including but not limited to health care,
15 food, shelter, clothing, or personal hygiene; and

16 (b) "Totally and permanently disabled":

17 1. Means the inability to do any substantial gainful activity by reason of
18 any medically determinable physical or mental impairment which can
19 be expected to result in death or which has lasted or can be expected to
20 last for a continuous period of not less than twelve (12) months; and

21 2. Includes a finding of permanent total disability by the Social Security
22 Administration that a person is disabled and qualifies for benefits or a
23 finding by an administrative law judge under KRS Chapter 342.

24 (2) (a) Notwithstanding any law to the contrary, if a defendant is convicted of a
25 violation of KRS 189A.010 and the violation caused the death of a parent or
26 guardian of a minor child or resulted in a finding by the court that a parent
27 or guardian of a minor child is disabled or totally and permanently disabled,

1 then the sentencing court shall order the defendant to pay restitution in the
2 form of child support to each child or dependent of the victim until the child
3 or dependent reaches eighteen (18) years of age, or under nineteen (19)
4 years of age if the child is still enrolled in high school.

5 (b) The court shall determine an amount that is reasonable and necessary for
6 the maintenance of the victim's child or dependent after considering all
7 relevant factors, including the:

8 1. Financial needs and resources of the child or dependent;

9 2. Financial resources and needs of the surviving parent or guardian of
10 the child or dependent;

11 3. Standard of living to which the child or dependent is accustomed;

12 4. Physical and emotional condition of the child or dependent and the
13 child's or dependent's educational needs;

14 5. Child's or dependent's physical and legal custody arrangements; and

15 6. Reasonable child care expenses of the surviving parent or guardian.

16 (3) The payment of restitution in the form of child support under subsection (2) of
17 this section may be enforced by the surviving parent or guardian opening a case
18 through the local office of child support enforcement or the child support division
19 of the county attorney's office.

20 (4) If a defendant who is ordered to pay child support under this section is
21 incarcerated and unable to pay the required restitution, the defendant shall have
22 up to one (1) year after the release from incarceration to begin payment,
23 including entering into a payment plan to address any arrearage.

24 (5) If a defendant's child support payments are set to terminate but the defendant's
25 obligation is not paid in full, the child support payments shall continue until the
26 entire arrearage is paid.

27 (6) (a) If the surviving parent or guardian of the child or dependent brings a civil

1 action against the defendant before the sentencing court orders child
2 support payments as restitution and the surviving parent or guardian
3 obtains a judgment and full satisfaction of damages in the civil suit, child
4 support shall not be ordered under this section.

5 (b) If the court orders the defendant to make child support payments as
6 restitution under this section and the surviving parent or guardian
7 subsequently brings a civil action and obtains a judgment, the child
8 maintenance order shall be offset by the amount of the judgment awarded
9 and paid by the defendant or the defendant's insurance for lost wages or
10 permanent impairment of the power to work and earn money in the civil
11 action.

12 ➔Section 2. This Act may be cited as Melanie's Law.